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December 14, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 7, 2005

Case Number: TSO-0260

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I find that access authorization should be restored in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the notification letter included a statement of the derogatory information causing the security concern.

The security concern cited in the letter involves the individual's excessive use of alcohol. In this regard, the letter cited his month-long inpatient treatment for alcohol dependence during April and May 2004 at an alcohol clinic (clinic). When the individual

¹/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

revealed that treatment to the DOE, he was sent for an evaluation by a DOE consultant psychiatrist. In a November 23, 2004 report setting forth the results of that evaluation, the DOE consultant psychiatrist found that the individual was alcohol dependent, and that he is a user of alcohol habitually to excess, which causes or may a significant defect in his judgment or reliability. According to the notification letter, this constitutes derogatory information under 10 C.F.R. § 710.8(j)(hereinafter Criterion J) and 10 C.F.R. § 710.8(h) (Criterion H). ²

In his report, the DOE consultant psychiatrist noted that the individual had already gone through extensive rehabilitation at the clinic, had further rehabilitation at an intensive program at a local outpatient facility, and had logged at least 100 hours of AA. He stated that "what he needs now to show both adequate evidence of rehabilitation or reformation is just more abstinence or sobriety time. The minimum amount of time that I would want . . . would be 2 years, which means he has another 1 ½ years to go."

During the interview, the DOE consultant psychiatrist asked the individual whether he had ever used illegal drugs. The individual told the DOE consultant psychiatrist that he had used illegal drugs while he was in college, during the 1970s. The individual had not disclosed this in a 1988 Personnel Security Questionnaire (PSQ). DOE Exh. 12. According to the letter, this falsification gives rise to a security concern under 10 C.F.R. § 710.8(f)(Criterion F).

The notification letter informed the individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual testified on his own behalf, and presented the testimony of his own evaluating psychiatrist

2/ Criterion J security concerns relate to an individual's use of alcohol habitually to excess, or to an individual's having been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. Criterion H relates to a mental condition which in the opinion of a board certified psychiatrist causes or may cause a significant defect in judgment or reliability.

(individual's psychiatrist), his counselor associated with the employee assistance program at his work site (EAP counselor), his wife, his two daughters, his father, his supervisor, his AA sponsor and AA "sponsee."

The DOE Counsel presented the testimony of the DOE consultant psychiatrist.

II. Hearing Testimony

The Individual

The individual readily admitted that he has a problem with alcohol and that it had taken over his life. He described his treatment at the clinic, which took place over a one-month period in April and May 2004. He also described his treatment at an intensive outpatient facility (IOP) after he returned from the clinic, and further ongoing treatment with the EAP counselor. Tr. at 276-278). The individual testified in detail about his involvement with AA, including participation in meetings, running AA meetings, involvement with a sponsor and acting as a sponsor to an AA participant. The individual indicated that immediately after his return from the clinic he had an alcohol relapse that lasted about three days. He then resumed his commitment to total abstinence from alcohol. He attributed his relapse to the fact that at the time he returned home from the clinic he did not yet have his full support system in place. The individual testified that he has not used alcohol since the May 2004 relapse, and has no intent to use alcohol again. Tr. at 284-87, 291. Accordingly, as of the time of the hearing, he had maintained abstinence for about 18 months. He testified that continuing with his AA group and all the activities associated with AA are key factors in his recovery from alcohol dependence and in his life in general. Further, his family ties are extremely important and he testified extensively about his involvement with his daughters' lives and about his close relationship with his wife. He testified that he currently does not have any urge to use alcohol, but that if he were under stress and felt the need for help, he has an AA support system and his own psychiatrist readily in place, and would know exactly how to handle stress. Tr. at 293-98.

With respect to the falsification about his drug use, the individual admitted that he had lied on his PSQ and recognized that it was a serious mistake to do so. He indicated that a significant part of his AA program involves the ability to be completely honest in his self assessment. It was for this reason that he voluntarily

disclosed his drug use to the DOE consultant psychiatrist during the evaluation. The individual stated that if he had not been honest with the DOE consultant psychiatrist "I would not have been safe within myself." Tr. at 258. He further stated that given his commitment to personal honesty, he will in the future be fully truthful with the DOE. Tr. at 260, 267-68.

AA Witnesses

The individual's AA sponsor testified that he has been the sponsor for the individual for about one and one-half years. He indicated that the individual is firmly committed to the AA program, and that he is an active and consistent participant in the program on a daily basis. He testified that the individual has taken the twelve-step AA program very seriously, and has worked through the steps honestly and sincerely. Tr. at 240-46.

The individual's "sponsee" testified that the individual has been working with him for about one year. He stated that the individual carefully goes over the AA material with him. Referring to the individual, this witness stated, "I want what he has." "He's not just taught me; he's shown me. He still inspires me." Tr. at 226-234.

Individual's Treatment and Evaluating Professionals

The individual's psychiatrist testified that he met with the individual four times for the purpose of evaluation. He further stated that he also provided the individual with treatment, counseling and support, and will continue to do so. He agreed with the diagnosis of the DOE consultant psychiatrist that the individual was alcohol dependent. However, based on the individual's one and one half years of abstinence, serious participation in AA, intensive outpatient and inpatient programs, and continuing commitment to the EAP, the individual's psychiatrist believed that the individual had demonstrated rehabilitation. Tr. at 15-46, 71-117. He testified that the concern that the individual may relapse has been resolved. Tr. at 114

The individual's EAP counselor has been working with him for nearly 20 months. She believed him to be very serious about his abstinence and his recovery programs. She stated that his brief relapse after returning from the clinic was due to the difficulties of returning to everyday life after the intensity of the inpatient program. She testified that he has been rehabilitated, and that his risk of relapse is low. Tr. at 48-70.

Supervisor

This witness stated that he is currently the individual's supervisor and has known the individual and worked with him for 21 years. He testified that the individual is a "reliable high performer," and he trusts the individual completely at work and personally. Tr. at 160-180.

Individual's Family

The individual's wife and daughters all testified that the individual takes his abstinence very seriously and that his commitment to AA is an important part of the individual's life. The wife verified that she has not seen the individual use alcohol since May 2004. The daughters also confirmed the individual's abstinence. Further, the daughters testified that he has been more involved in their day-to-day lives since he is no longer using alcohol. Tr. at 121-141; 184-188; 197-200.

The individual's father testified that he had advised the individual not to reveal his drug use in the 1988 PSQ. He stated that he regrets having given this bad advice to his son. With respect to the individual's alcohol dependence, the father testified that the last time he saw his son use alcohol was during the relapse that occurred immediately after he returned home from the clinic. Tr. at 210-220.

The DOE Consultant Psychiatrist

After listening to the testimony of all the above witnesses, the DOE consultant psychiatrist was convinced that the individual had maintained abstinence for the period since May 2004, and had also participated in AA, and outpatient and inpatient alcohol treatment. He was persuaded that the individual was very serious about both his commitment to abstinence and the AA program. However, the consultant psychiatrist maintained that in order to demonstrate reformation/rehabilitation, the individual still needed to remain abstinent for a total of at least two years in order to consider him rehabilitated. In this regard, the consultant psychiatrist believed that as of the time of the hearing, with only an 18-month abstinence period, the individual did not have a sufficiently low risk of relapse to be considered rehabilitated for purposes of restoring his DOE security clearance.

III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. Analysis

The first issue in this case is whether the individual has mitigated the Criteria J and H security concerns by demonstrating that he is reformed and/or rehabilitated from his alcohol dependence. A further issue is whether the individual has mitigated the Criterion F concerns regarding his falsification on the PSQ. As discussed below, I find that the individual has resolved those security concerns.

Criteria H and J

I believe that, as he contends, the individual has been abstinent from alcohol since May 2004. The AA sponsor testified convincingly in this regard, as did the individual's family. These witnesses, who see him on a daily basis and know him well, are in a very good position to judge whether the individual has refrained from alcohol, as he maintains. Their positive testimony was especially persuasive.

I am also convinced that the individual has undergone extensive inpatient and outpatient alcohol therapy. I am further persuaded that the individual participates daily in AA, and has made AA a important part of his life.

I must therefore consider whether, based on this very positive showing, the individual has demonstrated rehabilitation and/or reform. The issue here is whether the additional six months of abstinence that the DOE consultant psychiatrist has referred to, is necessary to assure a reasonably low risk of relapse. As discussed below, I do not find that an additional six months is necessary in this case.

As an initial matter, as I stated above, I find there is no question that individual has demonstrated an 18-month abstinence period. He has therefore already experienced all the normal ups and downs of the yearly cycle associated with holidays and daily stressors that ordinarily may give rise to a temptation to use alcohol.³ See *Personnel Security Hearing* (Case No. TSO-0150), 29 DOE ¶ 82,800 (2005). He has clearly withstood the ordinary stresses.

The individual has also testified about how he will manage out-of-the-ordinary stressful situations, such as death or severe illness of a family member. He testified about his extensive AA support system, his family and his psychiatrist, all of whom he trusts and

3/ As stated above, individual had a three-day relapse shortly after returning from the clinic. He and his experts attribute this to a lack of a solid support system and the difficulty of returning to an unstructured life outside the clinic. These types of difficulties are well behind him now. His sobriety period is dated from the time of the end of the three-day relapse, in May 2004. He has not hidden the fact of the relapse. I therefore see no reason to believe that the relapse itself should give rise to any concern about the individual's commitment to sobriety or to his ability to remain abstinent.

with whom he feels comfortable. He therefore believes that he will not need to turn to alcohol to cope with extreme stress. Tr. at 284-85, 297-98. I was very impressed with the fact that the individual has already given some thought to how he will handle extraordinary stresses that inevitably arise.

I found the testimony of the individual's psychiatrist very persuasive. His view was that it is not the time factor in this case that is the key to rehabilitation. He stated that here, "what's really important is what kind of recovery program does a person have in place. If they have a good recovery program in place, that tells me a lot more than whether they've been sober for 18 months or 24 months." Tr. at 80. In this case, the evidence is overwhelming that the individual has undergone extensive inpatient and outpatient therapy programs and has made AA an integral part of his life. As his psychiatrist testified, the individual's commitment to that program is unusually profound. Tr. at 97. Finally, as the individual's psychiatrist stated, the individual's "recovery is so impressive to me that I feel like we're not going to know anything more at 2 years. . . than we know right now." Tr. at 81.

I was less persuaded by the DOE consultant psychiatrist's view that a 24-month abstinence period is necessary here. His view was heavily grounded in statistical studies showing relapse rates in a number of different sample populations. Ultimately, I do not find these studies carry the day in this case. As the individual's psychiatrist indicated, there is no study that reflects the characteristics of this individual and all the work he has done. He believed that if we had such a study, the relapse probability would be different. Tr. at 102-03.

I recognize that the DOE consultant psychiatrist's evaluation was performed at the time that the individual had had only about six months of abstinence and attendance at AA (in addition to his participation in the IOP and clinic). At the time of the observation at the six month time frame, the consultant psychiatrist believed that a full two years of abstinence was necessary. This is entirely understandable.

However, at the hearing the individual brought forth considerable new information, including convincing testimony from his family, his AA associates, his own psychiatrist and his EAP counselor, all attesting to a very scrupulous and dedicated adherence to strict abstinence and an intense recovery program. Nevertheless, even after hearing from the family witnesses at the hearing, considering the opinion of the individual's psychiatrist and EAP counselor, and learning about the individual's impressive AA work, the DOE consultant psychiatrist did not appear to adjust his opinion, which

was based on study results, and take account of the special factors of this case.⁴ He still adhered to the two-year abstinence period, which he arrived at based on the study results.

In this case, I note the unusually intense AA program adhered to by the individual and his devotion to his family, both of which would be incompatible with any alcohol use whatsoever. Further factoring in the opinion of the individual's psychiatrist and his EAP counselor that the individual is rehabilitated, I find that 18 months of abstinence is adequate to demonstrate an acceptably low risk of relapse for this individual.

Based on the above considerations, I find that the individual has resolved the Criteria H and J concerns set out in the notification letter.

Criterion F

I find that the individual has resolved the concern regarding his falsification of the 1988 PSQ about his use of illegal drugs. As an initial matter, the falsification was a one-time reporting failure that took place in 1988, 17 years ago.⁵ Thus, the falsification itself is now well in the past.

However, the falsification does give rise to a concern as to whether the individual will be truthful in the future with the DOE when it

4/ The DOE consultant psychiatrist believed he had in fact adjusted his opinion to account for the individual's adherence to his recovery program. He testified that even though the study results suggested that after two years of abstinence the typical alcoholic would have about a 25 percent risk of relapse, he believed that this individual would have an acceptably low risk of relapse of about 10 percent after two years of abstinence. Tr. at 105. However, this was merely a repetition of the consultant psychiatrist's opinion in his original evaluation of November 2004. It still does not seem to take into account any of the testimony at the hearing. I therefore do not see that an appropriate adjustment was made to factor in the additional, updated information.

5/ The 1988 PSQ inquired about any illegal drug use, and the individual responded falsely that he had never used illegal drugs. Subsequent personnel security questionnaires filed by the individual asked about illegal drug use in the previous five years. Since the individual's illegal drug use took place in the 1970s, his failure to mention it in later PSQs was not a falsification or omission.

comes to matters that are unflattering to him. I believe that the individual has resolved this concern as well. The individual's illegal drug use came to light because he revealed it to the DOE consultant psychiatrist, who asked him if he had ever used illegal drugs. The individual was asked at the hearing why he told the DOE psychiatrist about this illegal drug use. He replied that the AA program is about honesty. "It was time for me to face up to the facts that I had done things that weren't honest. . . because I knew that if I didn't expose, if I didn't make amends for those, that one of these days they may crop up and cause me to drink again. I didn't want that to happen." Tr. at 258. He recognized the risk that he was taking, and that it could cause a further adverse impact on his eligibility for access authorization. Nevertheless, his commitment to honesty was his foremost concern. "The way I looked at it is, . . .I am not safe within myself. . . .I am not safe from drinking, and until I can overcome that and be honest with everything that I do, then I'm going to always have that at the back of my mind." *Id.* The individual indicated he is committed to honesty with the DOE in the future. Tr. at 259-61. ⁶ I was impressed by his willingness to expose his long-past drug use to the DOE consultant psychiatrist, because he believed that honesty was a key component to his overall commitment to sobriety. He made this revelation knowing that it would subject him to additional security concerns. It persuades me that he is fully prepared to be scrupulously honest with the DOE in the future, even to his own detriment.

6/ The individual indicated that he had used illegal drugs about 200 times over a period of about five years. He referred to this use as "experimentation." There was some question as to whether this level of use could truly be considered experimentation, or whether the individual was in fact a "drug user," but was not admitting it. Tr. at 263. I do not believe that the individual was being dishonest in his characterization, but rather had simply not reexamined the accuracy of the terminology that he had always used to describe his use. In this regard, the DOE consultant psychiatrist stated that he believed that the issue of whether the individual "experimented" with illegal drugs or was a "user," was "just semantics." Tr. at 309. Thus, I do not ascribe very much importance to the individual's terminology. I am convinced that he has fully revealed the nature and extent of his drug use to the DOE, and that he will be truthful with the DOE in the future.

V. CONCLUSION

As the foregoing indicates, I find that the individual has resolved the Criteria J, H and F security concerns cited in the Notification Letter. It is therefore my decision that this individual's access authorization should be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: December 14, 2005